

# OFFICE OF THE ATTORNEY GENERAL



92-00317

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ATTORNEY GENERAL  
STATE OF ALABAMA

JUN 11 1992

ALABAMA STATE HOUSE  
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Honorable J. David Stout  
Mayor, City of Fort Payne  
200 Gault Avenue, South  
Fort Payne, AL 35967

Fort Payne Improvement Authority -  
- Improvement Authorities - Boards  
of Trustees - Municipalities

The City Council of Fort Payne  
is the proper entity to appoint  
the Board of Trustees of the  
Fort Payne Improvement  
Authority.

The opinion to Honorable  
J. Luther Hendrix, President,  
DeKalb County Commission, under  
date of February 19, 1992, is,  
of necessity, overruled.

Dear Mayor Stout:

This opinion is issued in response to the request of the  
City of Fort Payne for an opinion from the Attorney General.

## QUESTION

Your question is presented as follows:

The City Council (the "Council"), as  
the governing body of the City of Fort  
Payne, Alabama (the "City"), has appointed  
the trustees of the Improvement Authority of  
the City of Fort Payne (the "Fort Payne  
Improvement Authority") for over fifty

years. Questions have now arisen concerning the authority of the Council to make such appointments, and the Council is advised that the Attorney General has issued an opinion dated February 19, 1992, to the effect that, on the basis of the facts stated in said opinion and the request therefore, the DeKalb County Commission is the proper entity to appoint the trustees of the Fort Payne Improvement Authority.

The Council respectfully requests:

(a) the referenced opinion be reconsidered and rescinded, on the basis of the facts contained herein, which show that the Fort Payne Improvement Authority is incorporated by and composed of the citizens and inhabitants of the City, and (b) the opinion of the Attorney General be issued that:

The board of trustees of the Improvement Authority of the City of Fort Payne shall be appointed by the governing body of the City of Fort Payne, Alabama.

#### FACTS AND ANALYSIS

In an opinion to Honorable J. Luther Hendrix, President, DeKalb County Commission, under date of February 19, 1992 (92-00162), this office, based on facts presented by the County Commission, concluded that the DeKalb County Commission was the proper authority to appoint the Board of Trustees of the Fort Payne Improvement Authority. The opinion request of the County Commission stated that the Fort Payne Improvement Authority served residents within the corporate limits of Fort Payne and residents of unincorporated areas of DeKalb County. In reliance solely on this fact this office concluded that the County Commission was the appointing authority.

The facts relied upon in the Hendrix opinion are not disputed, but additional and clarifying facts presented in the city's request for an opinion compel this office to review and reconsider our previous opinion.

The first important additional fact is that on April 12, 1940, an election was held in the City of Fort Payne on the question of whether "the citizens of the City of Fort Payne, Alabama, be incorporated by the name of the Improvement Authority of the City of Fort Payne for the purpose of furnishing to such city and its inhabitants and others to whom it may lawfully furnish such service for public and private uses the following services: electric heat, light and power services; . . ." (Emphasis supplied.) This election was held pursuant to Code of Alabama 1975, §§ 39-7-1, et seq.

The second important additional fact is that based on information provided in your opinion request and quoted above, the Fort Payne Improvement Authority is not "composed in whole or in part of inhabitants of an unincorporated area," as we concluded in the Hendrix opinion. Instead, the Fort Payne Improvement Authority is composed of an incorporated city or town. Pursuant to Code of Alabama 1975, § 39-7-32, however, such an authority is empowered to "furnish services for public and private use within 25 miles from the boundaries of its territory."

On April 16, 1940, the City Council of the City of Fort Payne adopted a resolution declaring that "the citizens of the State of Alabama, who are inhabitants of the territory, the boundaries of which are coterminous with the boundaries of the City of Fort Payne, Alabama, are incorporated as the 'Improvement Authority of the City of Fort Payne.'" Based upon this fact and other facts cited above, it is the opinion of this office that the Authority is, under Code of Alabama 1975, § 39-7-14, "composed of an incorporated city or town" and as such, the "trustees shall be appointed by the governing body of the city or town."

The opinion to Honorable J. Luther Hendrix, President, DeKalb County Commission, under date of February 19, 1992 (92-00162), is, because of the existence of facts unknown to this office on February 19, 1992, of necessity, overruled.

#### CONCLUSION

The City Council of Fort Payne is the proper entity to appoint the Board of Trustees of the Fort Payne Improvement Authority.

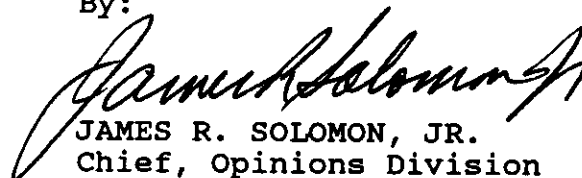
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The opinion to Honorable J. Luther Hendrix, President,  
DeKalb County Commission, under date of February 19, 1992, is,  
of necessity, overruled.

I hope this sufficiently answers your question. If our  
office can be of further assistance, please do not hesitate to  
contact us.

Sincerely,

JIMMY EVANS  
Attorney General  
By:



JAMES R. SOLOMON, JR.  
Chief, Opinions Division

JE/CJS/jho

cc: Honorable J. Luther Hendrix

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